

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHRIS TALUSKIE

Claimant

VS.

RETRO TECH SYSTEMS INC.

Respondent

AND

ZURICH U. S. INSURANCE CO.

Insurance Carrier

Docket No. 1,013,369

ORDER

Claimant requests review of the February 5, 2004 preliminary hearing Order Denying Medical Treatment entered by Administrative Law Judge Brad E. Avery.

ISSUES

The Administrative Law Judge (ALJ) found the parties were not subject to the Kansas Workers Compensation Act because claimant was hired in Tennessee, his accidental injury occurred in Nebraska, and his principal place of employment was not Kansas. Accordingly, the ALJ denied claimant's request for medical treatment.

The claimant requests review and argues that he had leased an apartment in Lawrence, Kansas, because he had been assigned to work on a project at the University of Kansas for a number of months. Because he had established a residence and had worked for a week in Kansas before his temporary return to work in Nebraska, claimant argues his principal place of employment was Kansas.

The respondent requests the Board to affirm the ALJ's determination that claimant failed to meet his burden of proof that his principal place of employment was Kansas. Respondent argues the evidence establishes that during claimant's approximate 27 months of employment with respondent he worked in Kansas one week and had otherwise worked in four other states. And respondent notes claimant agreed that as soon as the project in Lawrence, Kansas, was completed he would have moved to a different location and project.

The only issue is whether claimant's principal place of employment was within Kansas for purposes of the Kansas Workers Compensation Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant was hired by respondent on May 26, 2001, in Johnson City, Tennessee. Claimant was hired as an electrical installer. The nature of respondent's business was to provide lighting upgrades for customers in order to cut down power consumption. Claimant noted this was primarily performed for universities, military installations and counties. This work required claimant to travel to various states where respondent had contracted to provide the lighting upgrades.

After claimant was hired he worked on a project in Tennessee until February 2002. He then was assigned to a job at the University of Phoenix in Tucson, Arizona, until November 27, 2002. Claimant then reported to Nebraska where he worked until July 2003. Then he worked for three weeks in Michigan. Claimant was then asked to work a job at the University of Kansas in Lawrence, Kansas. Because that project was expected to last several months the claimant leased an apartment and began work on the project in Lawrence, Kansas. After working a week in Kansas, the claimant was temporarily reassigned to the project in Nebraska.

On August 27, 2003, he was upgrading lighting inside a building at Offet Air Force Base in Bellevue, Nebraska. Claimant was on an 80-foot boom lift when it shifted into high speed and threw the claimant against the cage injuring his lower back. After this injury, he worked one more day in Nebraska and then returned to Lawrence, Kansas, until his employment with respondent was terminated on October 7, 2003.

It is undisputed claimant's alleged injury occurred in Nebraska. The Act confers jurisdiction in some cases where the injury is sustained outside the state. The two provisions that confer Kansas jurisdiction are (1) if the principal place of employment is within the state, or (2) the contract of employment was made within the state, unless the contract specifically provides otherwise.¹

K.S.A. 44-506 (Furse 2000) provides:

The workmen's compensation act shall not be construed to apply to business or employment which, according to law, is so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they

¹ *Abbey v. Cleveland Inspection Services, Inc.*, 30 Kan. App. 2d 114, 41 P.3d 297 (2002).

are so engaged: *Provided*, That the workmen's compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides: *Provided, however*, That the workmen's compensation act shall apply to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of the state of Kansas and to all projects, buildings, constructions, improvements and property belonging to the United States of America within said exterior boundaries as authorized by 40 U.S.C. 290, enacted June 25, 1936.

Because claimant's accident occurred in Nebraska and his contract of employment was made in Tennessee, for the Kansas Act to be applicable the claimant must establish that his principal place of employment was within Kansas.

Before the accident on August 27, 2003, the claimant worked for respondent for approximately 27 months in 5 different states. During that time period he only worked in Kansas for a week. This record does not indicate Kansas was the primary or chief area where claimant worked. Moreover, the claimant agreed that after the project at the University of Kansas was completed he would then move to the next job site which would likely be in a different state. As noted by the ALJ, the nature of claimant's work was transient and he did not have a principal place of employment, instead he traveled from job site to job site. Accordingly, the Board is unable to conclude that claimant's principal place of employment was within Kansas.

As claimant has failed to establish there is jurisdiction under the Kansas Workers Compensation Act, the ALJ's Order is affirmed.

WHEREFORE, it is the finding of the Board that the Order Denying Medical Treatment of Administrative Law Judge Brad E. Avery dated February 5, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April 2004.

BOARD MEMBER

c: James L. Wisler, Attorney for Claimant
Wade A. Dorothy, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director